

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14025 of Jerry Jerome, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the minimum lot area requirements (Sub-section 3301.1) to use all floors and basement of the subject premises as a four unit apartment house in an R-4 District at premises 1339 Irving Street, N.W., (Square 2843, Lot 814).

HEARING DATE: September 21, 1983
DECISION DATE: October 5, 1983

FINDINGS OF FACT:

1. The subject property is located on the north side of Irving Street between 13th and 14th Streets and is known as premises 1339 Irving Street, N.W. It is zoned R-4.

2. The subject site is flat, rectangular in shape and has a lot area of 2,471.58 square feet.

3. The subject site is improved with a three-story plus basement brick row structure which was constructed in c. 1900. The structure contains approximately 3,641 square feet of floor area.

4. The applicant proposes to use the subject premises as a four-unit apartment house. The subject structure was previously occupied as a rooming house pursuant to Certificate of Occupancy No. 82620. In the alternative, the applicant requested variance relief to permit three units.

5. Sub-section 3301.1 of the Zoning Regulations requires a minimum lot area of 900 square feet per unit for the conversion of a building existing on May 12, 1958, to an apartment house in the R-4 District.

6. The proposed four-unit apartment house requires a minimum lot area of 3,600 square feet. The subject lot is 2,471.58 square feet in area. A variance of approximately 1,128 square feet from the minimum lot area requirements is necessary to permit the proposed four unit building. A variance of 228 square feet would be required to permit three units.

7. Counsel for the applicant contended that the elements of estoppel are present in the subject case. The elements of estoppel, as set forth by the D.C. Court of

Appeals in Saah vs. D.C. Board of Zoning Adjustment, 433 A.2d 1114 (D.C. App., 1981) are as follows:

- a. A party, acting in good faith;
- b. On the affirmative acts of a minicipal corporation;
- c. Makes expensive and permanent improvements in reliance thereon; and
- d. The equities strongly favor the party seeking to invoke the doctrine.

8. The applicant purchased the property in 1979 in reliance upon the oral representations of the seller that the existing rooming house use could be converted into a four-unit apartment building if the applicant was willing to undertake the necessary renovation of the structure.

9. The applicant was inexperienced in real estate transactions and did not check whether the proposed use was permitted in the zone district in which the property is located.

10. The applicant undertook substantial renovations to the subject structure to convert the premises into a four-unit apartment building. Those renovations took approximately twelve months to complete, at a cost of approximately \$35,000 and were carried out, for the most part, under properly issued permits. There were no exterior alterations to the existing structure.

11. The applicant's first contractor undertook the installation of plumbing, gas and electrical fixtures for one unit without the issuance of proper permits. The applicant discharged this contractor and hired a second contractor to finish the conversion.

12. The second contractor hired by the applicant carried out the renovation pursuant to permits issued by the D.C. Department of Licenses, Investigations and Inspections.

13. Electrical Permit No. B-385799, dated June 27, 1979, permitted the installation of "forty outlets, forty fixtures inside, heavy - up to 3-100 AMP MLS."

14. Electrical Permit No B-3867208, dated October 5, 1979, permitted the applicant to "install service conductors and connect switches: A.L.D. 8.M. for A-100A Disc."

15. Plumbing and Gas Permit No. B-285766, dated March 12, 1980, permitted "WORK IN OLD BLDG, FOUR BATHTUBS, WATER

CLOSETS AND BASINS, THREE SINKS AND GARBAGE DISPOSALS, THREE ELECTRIC WATER HEATERS, GAS RANGES AND GAS FIRED BOILERS."

16. Counsel for the applicant contended that the permits listed in Findings of Fact No. 13, 14 and 15 are indicative of the applicant's intent to use the subject premises as a multi-unit dwelling. All work done pursuant to those permits was inspected and approved by the D.C. government.

17. The applicant applied for a certificate of occupancy to use the subject building as a four-unit apartment building in May, 1980. The renovation of the subject structure was only partially completed at that time. The applicant testified that the permit examiner advised him that a certificate of occupancy for four units could not be issued until the renovation of all units was completed.

18. Only two units within the subject structure were ready for occupancy in May, 1980. The applicant testified that the examiner advised him to apply for a certificate of occupancy for those two units and to re-apply for all four units when renovation of the entire structure had been completed. Subsequently, Certificate of Occupancy No. B-120232, dated May 30, 1980, was issued for use of the subject premises as a flat.

19. The majority of renovations were completed and all units were occupied by the end of 1980. All renovations were completed by April, 1981. All units are currently occupied. No certificate of occupancy for a four-unit apartment house has been issued.

20. The applicant was made aware of the absence of a proper certificate of occupancy for the subject premises after his purchase of a second building caused him to apply for proper licensing and registration of that building with the Rental Accommodations Office

21. The applicant re-applied for a certificate of occupancy to use the subject premises as a four-unit apartment house in December, 1982. That application for a certificate of occupancy was denied. The applicant subsequently filed the subject application seeking appropriate variance relief from the Board.

22. The income from the rental of all four units is \$1,190 per month. The applicant testified that rental of only two units would not support the building financially.

23. The applicant testified that all of the tenants presently occupying the building wish to remain. Denial of the requested relief would force the displacement of the tenants of two of the units.

24. Counsel for the applicant asserted that the applicant has no legal basis for the eviction of any tenants under the provision of the Rental Accommodations Act.

25. Counsel for the applicant contended that the District is estopped from requiring the applicant to reduce the number of units in the subject premises for the following reasons:

- A. The applicant in good faith, relied upon the representations made by the seller. Further, in reliance on permits duly issued by the D.C. government, the applicant invested approximately \$35,000 in permanent improvements to the structure for conversion of the premises to a four unit apartment building.
- b. The plumbing, gas and electrical permits issued by the DC government provide for installation of fixtures which would be indicative of the provision of four bathrooms and three kitchens in the subject premises. Issuance of those permits represents affirmative action on the part of the DC government in allowing the installation of at least three units in the subject structure.
- c. The equities strongly favor the applicant, in that a reduction in the number of units would substantially reduce the financial support of the building and would further result in the displacement of existing tenants.
- d. The existing apartment house is the highest and best use of the property, has a reasonable financial yield, and does not adversely affect the character of nor the property values in the immediate neighborhood.

26. The Office of Planning, by memorandum dated September 7, 1983, recommended denial of the requested variance. The Office of Planning noted that the subject site is rectangular in shape, basically flat, and is similar in size and shape with other row dwellings in the neighborhood. The predominant use in the area is flats. The Office of Planning was of the opinion that the standards for granting an area variance had not been met and that the existence of an illegal use should not be condoned by the granting of variance relief when no basis for such relief was evidenced.

27. Advisory Neighborhood Commission 1A made no recommendation on the subject application.

28. A resident of 1346 Irving Street, N.W. appeared at the public hearing in opposition to the application. The opposition testified that use of the subject premises as a four-unit apartment building will generate greater demand for on-street parking than a single-family dwelling and will worsen the existing lack of parking in the area. In addition, the opposition had observed an occupant of the subject building disposing of trash in the front yards of residences located on the south side of Irving Street.

29. The applicant, in rebuttal, testified that he employs a neighbor to police the property and dispose of trash. Tenants are supposed to place their trash in garbage bags in the front yard of the subject premises for removal. The applicant was unaware of any problems concerning trash removal, but indicated he would take steps to remedy the situation immediately.

30. As to the issue of parking, the applicant provides two on-site parking spaces at the rear of the premises. No variance relief from the parking requirements is required as part of this application.

31. As to the applicant's arguments on estoppel, the Board finds that the applicant has not demonstrated, by any evidence, that the District of Columbia Government knew or should have known that it was approving a four-unit building. None of the permits submitted to the record evidences on its face that the use was for a four-unit building. Significantly, the plumbing permit submitted, cited in Finding No. 15, referenced four bathtubs, but only three sinks and garbage disposals and three water heaters.

32. The Board finds that the application for a plumbing permit to install three sinks with garbage disposals would have indicated an intent to install three kitchens, rather than four. Additionally, the installation of three water heaters, gas ranges and boilers also indicates an intent to create three units in the building, as there would be no need for three water heaters and boilers for only two units.

33. The Board finds that, while no more than two units should have been allowed in the building, the District's approval of the permits cited constituted an affirmative action on which the applicant relied.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing of a practical difficulty upon the owner of the property which stems from an exceptional or extraordinary condition of the property itself. The subject site is

rectangular in shape and is not exceptional with regard to narrowness, shallowness, topography or type of development. The Board concludes that there is no exceptional condition inherent in the property itself which warrants the granting of the requested area variance.

The Board admonishes the applicant for acting less than prudently when purchasing and converting the subject premises. However, the Board concludes that the elements of estoppel, as set forth in Finding of Fact No. 7, are in existence with respect to three units. The record evidences that the applicant acted in good faith in reliance upon the affirmative action of the D.C. government in issuing permits. The applicant made expensive and permanent improvements to the subject building.

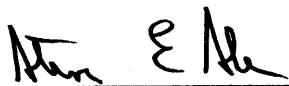
Denial of the application would result in loss of income for the applicant and the displacement of the tenants of two of the existing units. However, approval of the application for four units cannot be sustained. The applicant has made no showing that the estoppel argument can successfully apply to a four unit building. The extent of the variance required for four units, over 1,100 square feet, further is contrary to the intent of the Zoning Regulations, and reduces the balance of equities less in favor of the applicant.

Approval of three units is much closer to the requirements of the Regulations, and can be sustained, even though one unit must be removed. The use of the building for three units will not adversely affect the use of neighboring properties or cause substantial detriment to the public good. The equities, for a three unit building, therefore, strongly favor the owner of the property in the application. Accordingly it is ORDERED that the variance relief necessary for a four-unit apartment is DENIED and the relief necessary for a three-unit apartment is GRANTED.

VOTE: 4-0 (Maybelle T. Bennett, William F. McIntosh, Carrie L. Thornhill, and Douglas J. Patton to grant three units; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAR 30 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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